

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**SOUTH TEXAS FRAC LLC**  
*Plaintiff*

**V.**

**PHOENIX PROCESS EQUIPMENT CO.**  
*Defendant*

§  
§  
§  
§  
§  
§  
§

**CIVIL ACTION NO. 20-cv-00678**

**JOINT ADVISORY TO THE COURT REGARDING THE PARTIES' PENDING MOTIONS**

In accordance with the Court's February 25, 2021 Order, the parties provide this Joint Advisory to the Court regarding the pending motions [ECF Docs. Nos. 25, 26, 29, 30, and 40]. For purposes of this advisory only, Plaintiff South Texas Frac LLC and Third-Party Defendant WI Texas Frac LLC will be referred to collectively as "Plaintiffs."

**A. Rule 12(b)(6) Motions to Dismiss and Motions for Leave to File Amended Complaints.**

1. On December 30, 2020, Defendant filed its Rule 12(b)(6) Motions to Dismiss regarding certain claims and damages asserted by Plaintiffs [ECF Docs. No. 25 and 26]. In response, Plaintiffs filed their Motions for Leave to file Amended Complaints [ECF Doc. Nos. 29 and 30]. Counsel for the parties have conferred and have agreed that:

- There is no opposition to the Motions for Leave to file Amended Complaints [ECF Doc. Nos. 29 and 30]:
- Defendant's Answer to the Amended Complaints will be due by March 31, 2021:
- Defendant will re-file its Rule 12(b)(6) Motions to Dismiss on Plaintiffs' Amended Complaints:
- The Court does not need to rule on Defendant's Rule 12(b)(6) Motions to Dismiss [ECF Docs. No. 25 and 26] until Defendant re-files its Rule 12(b)(6) Motions to Dismiss on Plaintiffs' Amended Complaints.

**B. Defendant's Motion to Compel Plaintiff's document production.**

2. Defendant's Motion to Compel [ECF Doc. No. 40] Plaintiffs' document production concerns documents supporting Plaintiffs' claim of over \$25,000,000.00 in alleged lost profits. On February 11, 2021, Plaintiffs produced additional accounting documents, and on March 5, 2021, Plaintiffs produced their customer contract that Defendant was seeking.

3. Defendant is currently reviewing the documents produced by Plaintiff, and therefore, this Motion is currently moot. However, Defendant reserves the right to refile a Motion to Compel (after conferring with counsel) regarding documents supporting Plaintiff's damages should Defendant's review of the latest document production determine it is necessary.

**C. Defendant's Motion for Continuance.**

4. Counsel is continuing to confer on this issue and will supplement this advisory on or before the Court's deadline of March 19, 2021.

Respectfully submitted,

**POPE, HARDWICKE, CHRISTIE, SCHELL, KELLY &  
TAPLETT, LLP**

By: /s/ R.L. Florance, IV (w. permission)

**Robert L. Florance, IV**

State Bar No. 24087520

[rflorance@popehardwicke.com](mailto:rflorance@popehardwicke.com)

500 West Seventh Street, Suite 600

Fort Worth, Texas 76102-4751

Phone: (817) 332-3245

Fax: (817) 877-4781

/s/ Michael McCrum

Michael McCrum

Texas State Bar No. 13493200  
MCCRUM LAW OFFICE  
404 East Ramsey Rd., Suite 102  
San Antonio, Texas 78216  
Phone: (210) 225-2285  
Fax: (210) 225-7045  
michael@mccrumlegal.com

**ATTORNEYS FOR PLAINTIFF  
SOUTH TEXAS FRAC LLC AND  
COUNTER-DEFENDANT WI TEXAS FRAC, LLC**

And

**BENJAMIN, VANA, MARTINEZ & CANO, LLP**

By: /s/ Stephen K. Luxton  
**Matthew B. Cano**  
State Bar No. 03757050  
Email: [mcano@benlawsa.com](mailto:mcano@benlawsa.com)  
**Stephen K. Luxton**  
State Bar No. 24087953  
Email: [sluxton@benlawsa.com](mailto:sluxton@benlawsa.com)

3600 Bee Caves Road, Suite 201  
Austin, Texas 78746  
Phone: (512) 732-1880  
Fax: (210) 881-0668

**COUNSEL FOR DEFENDANT PHOENIX  
PROCESS EQUIPMENT CO.**